



Declaration Under 37 C.F.R. § 1.131

NOW COMES Deane Gardner, who deposes and states as follows:

1.

I am over twenty-one (21) years of age and am competent to testify in this matter. Unless otherwise indicated, the facts set forth herein are based upon personal knowledge. I understand that willful false statements are punishable by fine or imprisonment, or both and may jeopardize the validity of the application or any patent issuing thereon.

2.

That I am an applicant and co-inventor of all claims now pending in U.S. Patent Application Serial No. 09/757,241 filed January 8, 2001 in the United States Patent and Trademark Office for "INTEGRATING PERSONAL DATA CAPTURING FUNCTIONALITY INTO A PORTABLE COMPUTING DEVICE AND A WIRELESS COMMUNICATION DEVICE", hereinafter referred to as "the present application."

3.

That in late October 2000, my co-inventor and I retained Marina Portnova, Esq. of the law firm of Blakely, Sokoloff, Taylor & Zafman LLP as patent counsel for purposes of drafting and filing the present application. At the time we began working with Marina Portnova, we had already conceived of the subject matter of each of the claims now pending in the present application.

4.

That following my initial conference with patent counsel at the end of October 2000, I was advised to provide a preliminary

drawing illustrating the present invention for purposes of facilitating completion of a draft specification and drawings. I notified patent counsel that I would provide the drawing on November 3, 2000, however, due to the day to day demands of my business responsibilities, transmission of the requested drawing was delayed until November 6, 2000. Accordingly, in the cover letter accompanying the requested drawing, I expressed to patent counsel my regret for the delayed ("tardy") transmission. The hand drawn preliminary drawing and accompanying cover letter are attached hereto as Exhibit A

5.

That following my transmission of the above described preliminary drawing on November 6, 2000, patent counsel subsequently sent a completed draft specification for the present application and the completed drawings to be included therewith to me via email for my review on November 9, 2000. I have reviewed the attached drawings retained by Marina Portnova, which illustrate the present application. (The drawings are attached hereto as Exhibits B, C, D, E and F.) I have verified that these attached drawings, Exhibits B-F, are true and accurate copies of drawing that Marina Portnova provided for review by me and my co-inventor on November 9, 2000, as evidenced by the attached email correspondence from patent counsel, Marina Portnova, wherein the above referenced drawings are provided as attachments. (This email is attached as Exhibit G.)

6.

Based upon my individual recollection and the attached corroborating materials, it is my testimony that my co-inventor and I had conceived the subject matter of the claims now pending

in the '241 application prior to November 16, 2000. Further from the time we began working with Marina Portnova until the time when the invention was constructively reduced to practice on no later than January 8, 2001, we exercised due diligence in the preparation of the formal application and the execution of accompanying documents with no more than the usual interruptions for holidays and the regular everyday demands of our business. It is my understanding that the application and related documents were first mailed to the United States Patent and Trademark Office on or about January 8, 2001, and were afforded a filing date with the United States Patent and Trademark Office on or about January 8, 2001.

I hereby declare under oath and under penalty of perjury that the foregoing statements are true and correct.


Deane Gardner
September 14, 2005

**S P O R T B R A I N**

To: MARINA PORTNOVA	From: DEANE GARDNER
Fax: 408 720 9392	Pages: 2
Phone:	Date: 11/6/00
Re: CELL/IDA INTEGRATOR	CC:

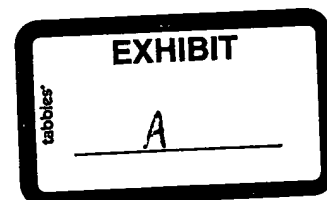
MARINA,

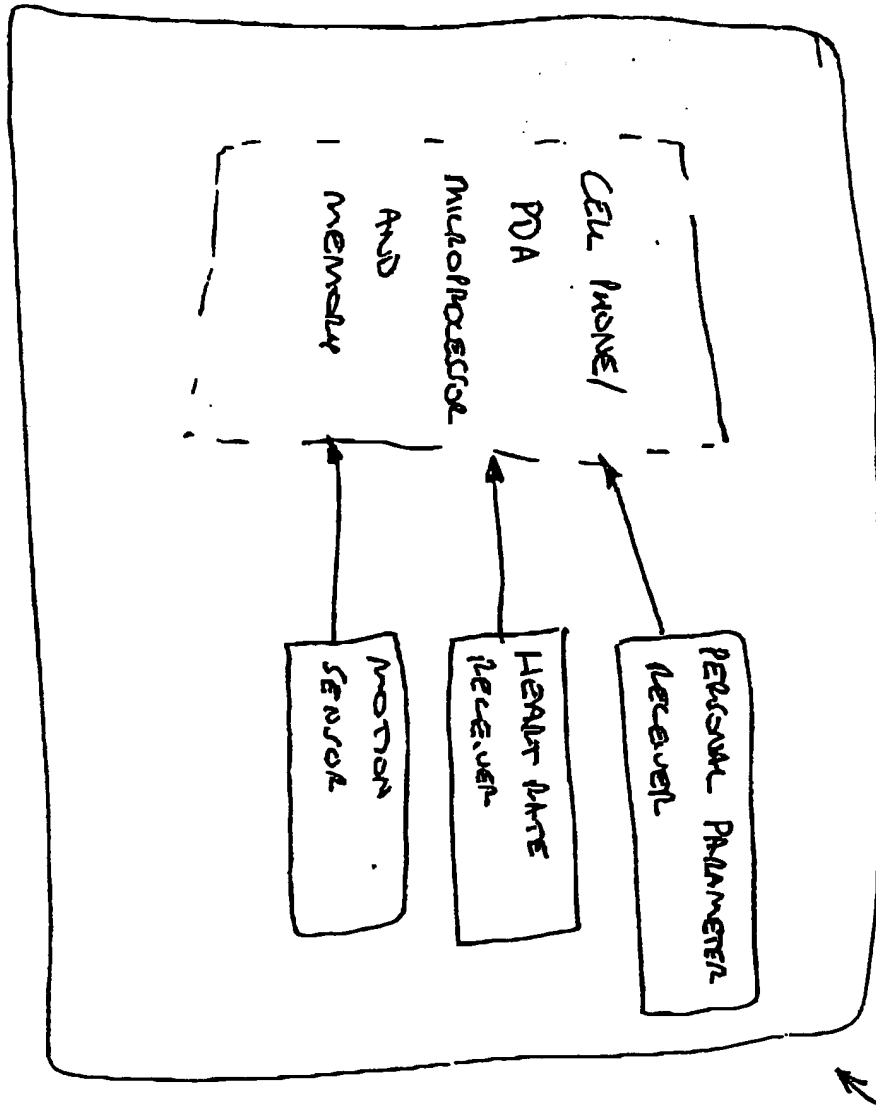
HERE'S ~~MY~~ MY TARDY DRAWING.

SORRY ITS LATE.

DEANE

785 Palomar Ave.
Sunnyvale, CA 94086
408-523-9000
Fax 408-523-9101





CELL PHONE, PDA, OR
COMBINATION CELL PHONE/PDA

SPORTBRAIN FUNCTIONS INTEGRATED INTO CELL PHONE AND/OR PDA



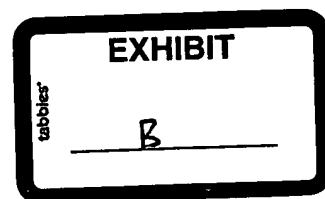
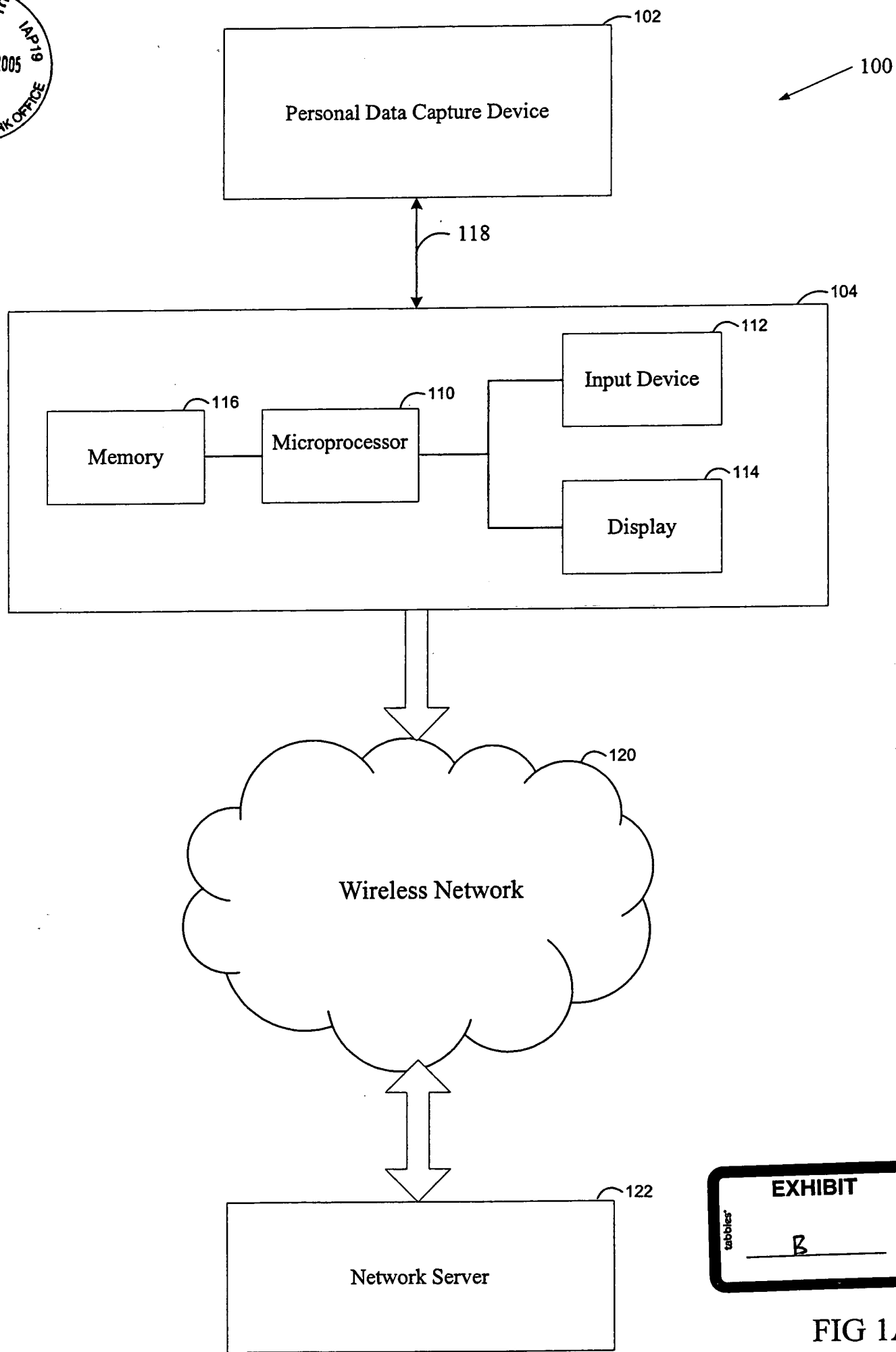


FIG 1A

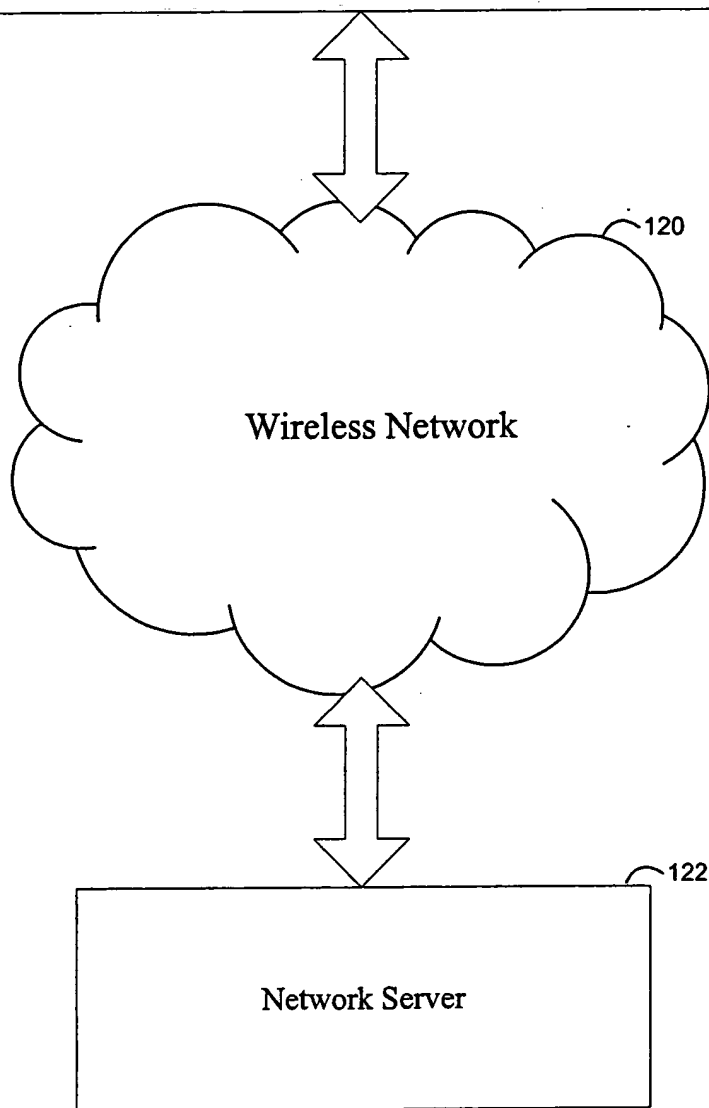
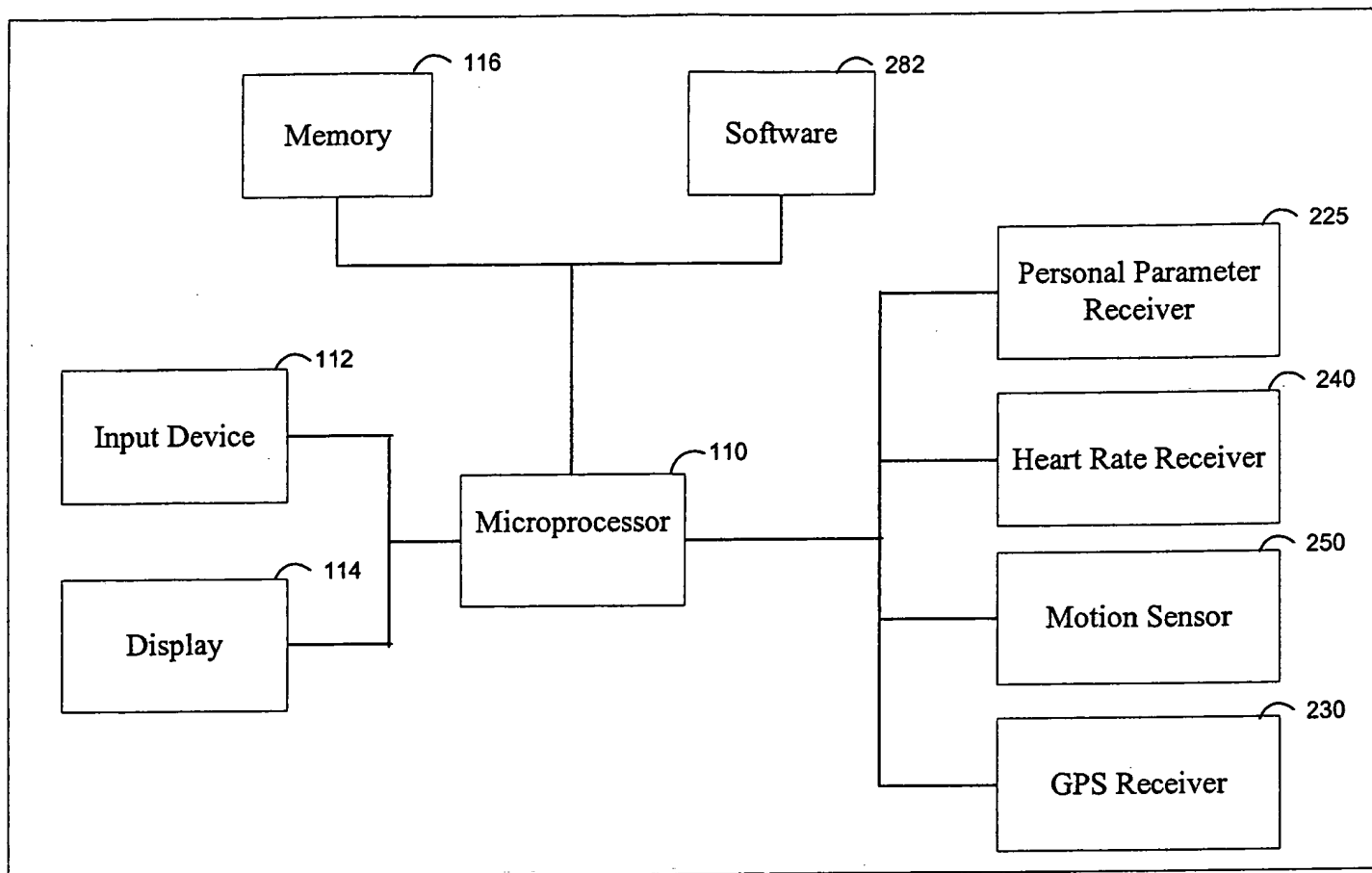


FIG 1B

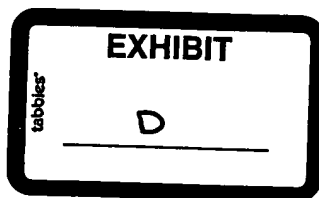
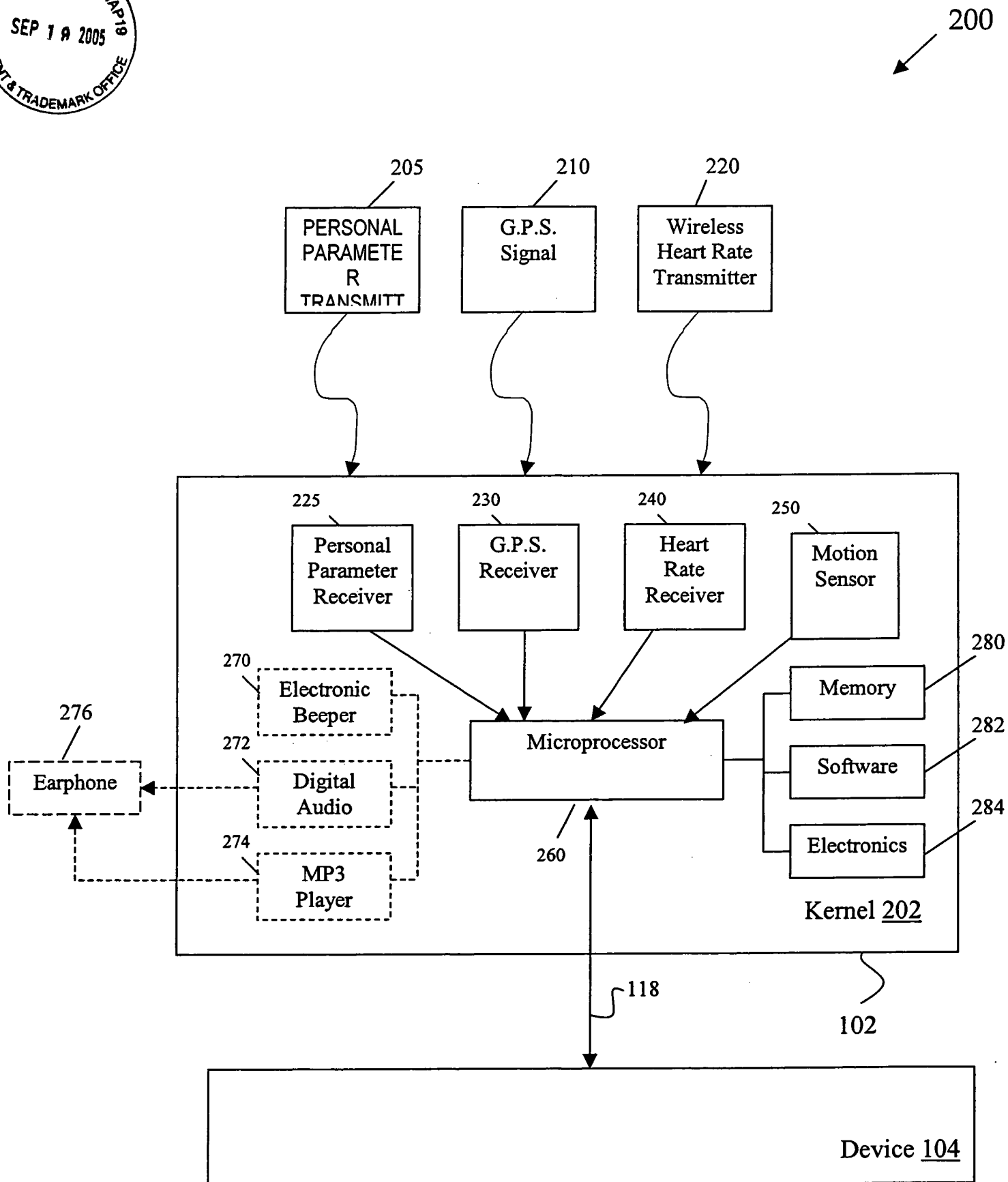


FIG. 2

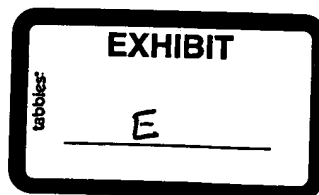
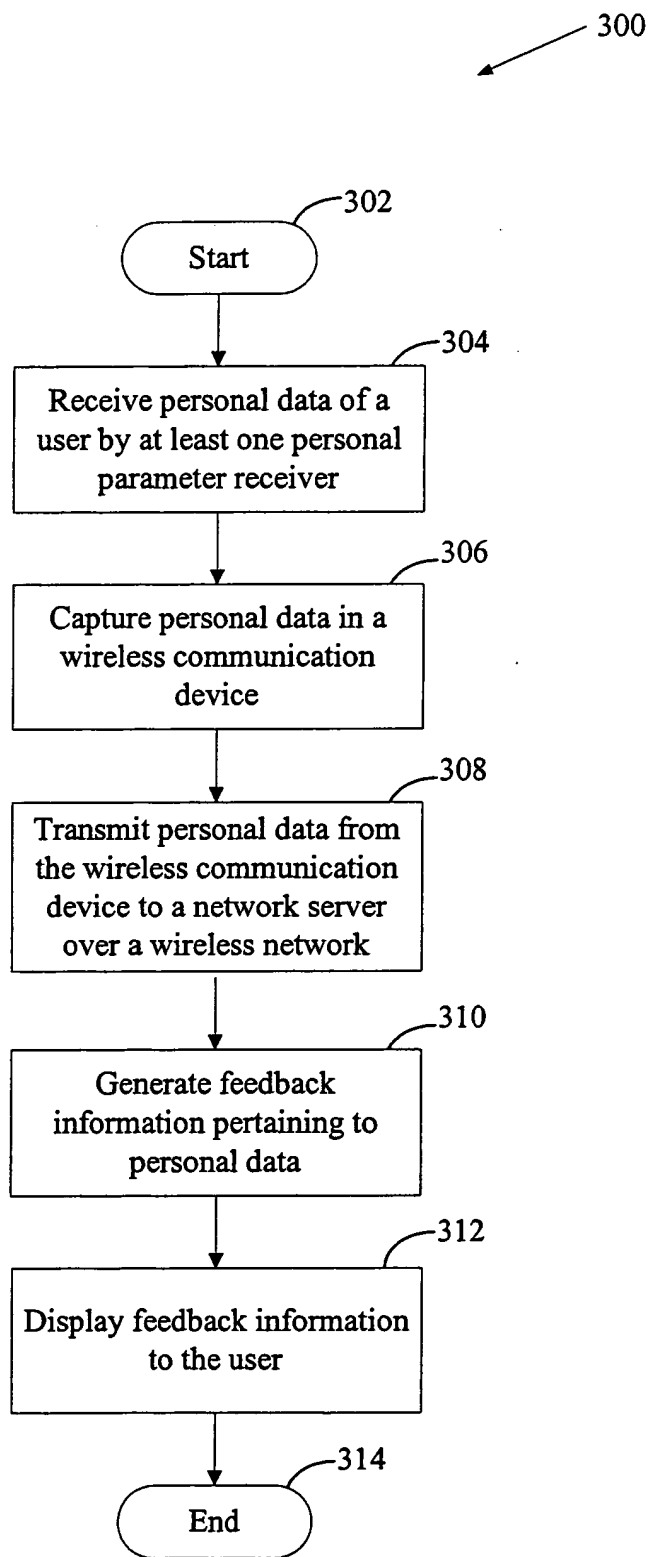


FIG. 3

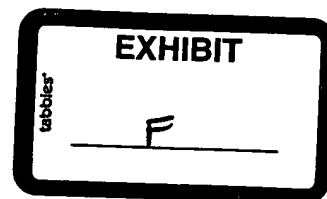
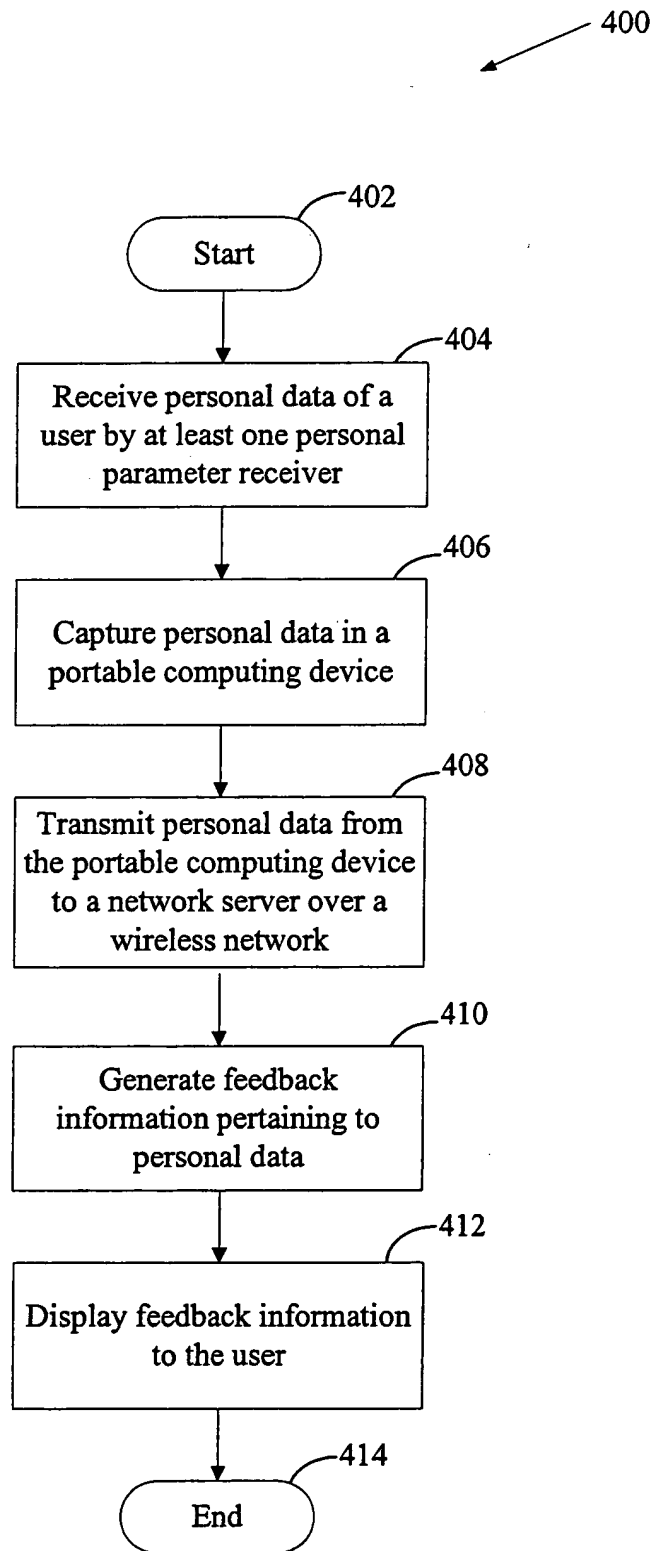
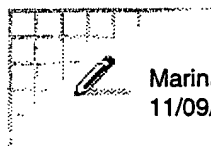



FIG. 4



Marina Portnova
11/09/2000 12:17 PM

To: dgardner@sportbrain.com
cc:
Subject: First Draft for the cell phone application 

Deane,

Attached please find the first draft for the cell phone application. Please review it and let me know your comments. I will also need a list of inventors for this application.

Thanks,
Marina

P.S. Let me know if you cannot open Visio drawings and we will fax them to you.



n009 Fig 4 vs n009 Fig 1B vs n009 Fig 2 n009 Fig 3 vs n009 Fig 1A v SportBrain P009 Draft

CONFIDENTIAL
ATTORNEY-CLIENT PRIVILEGE

RE: Draft Patent Application

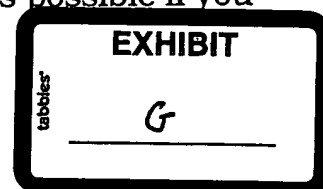
I enclose herewith a draft patent specification for review by you and your co-inventors. Please carefully study the draft specification, and let me have your comments. If changes to the specification are necessary, please mark any insertions, deletions or corrections on the face of the draft, and then return the marked-up draft to me. Alternatively, you may edit the electronic copy and e-mail this back to me.

Duty to Disclose Prior Art

Please keep in mind that you and your co-inventors have a continuing duty to disclose to the U.S. Patent and Trademark Office information of which you are aware, and that you consider of relevance to the patentability of your invention. For example, if you or your co-inventors are aware of any publications bearing on your invention, please bring them to my attention.

No Public Use or Sale

It is my understanding that the invention has not been patented or described in a printed publication in the U.S. or a foreign country, or been in public use or on sale in the U.S. Please let me know as soon as possible if you



believe otherwise.

Best Mode and Enablement

In reviewing the application, keep in mind that you and your co-inventors must disclose your preferred way (i.e., the best mode) of carrying out the invention. For instance, if there are special configurations that you prefer, they must be set forth in the application.

In addition, please be aware that this application must be enabling to one having ordinary skill in the art.

I look forward to hearing from you as soon as possible. Please do not hesitate to contact me at (408) 720-8300 should you have any queries concerning the proposed patent application.

Very truly yours,

Marina Portnova

Marina Portnova
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Fax: 408.720.9397